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6. Homicide (§§ 313 (1), 330*)—Verdict Convicting of Attempt to Murder Not Invalid because Not Finding Degree.—In a prosecution under indictment charging attempt to commit the crime of murder, verdict of guilty held not invalid because it did not expressly appear therefrom that the jury found defendant guilty of attempt to commit murder in the first degree, and, in the absence of the evidence or instructions, the appellate court must presume that the jury in fact found defendant guilty of an attempt to commit murder in the first degree, in which case alone it could have lawfully fixed the punishment named in the verdict.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 165.]

7. Criminal Law (§ 1144 (6)*)—General Verdict Presumed to Be Responsive to All Issues Affecting Its Correctness.—Even in civil cases a general verdict is presumed to be responsive to all issues affecting its correctness, and it is only where it affirmatively appears from the record that it is uncertain whether the verdict responds to all such issues that it will be held to be invalid, which rule is still stronger in criminal cases.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 612.]

Error to Circuit Court, York County.

Lou Emma Fields was convicted of an attempt to commit murder, and she brings error. Affirmed.

Ashton Dovell, of Williamsburg, for plaintiff in error.

Ino. R. Saunders, Atty. Gen., and *J. D. Hank, Jr., Asst. Atty. Gen.*, for the Commonwealth.

BRAGG v. JUSTUS et al.

March 17, 1921.

[106 S. E. 335.]

1. Exceptions, Bill of (§ 43 (1)*)—Bill Must Be Filed within Time or Court Is without Jurisdiction.—The filing of bills of exception within the time prescribed by law is of the very essence of the jurisdiction of the trial court, and, if not filed in such time, the trial court cannot make the bills a part of the record thereafter, nor can the matter be affected by consent of counsel.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 388.]

2. Exceptions, Bill of (§ 41 (5)*)—Bill Must Be Filed within 60 Days after Rendition of Judgment.—Where judgment was rendered February 2, a bill of exceptions filed May 18 comes too late, and cannot be considered, for the bill of exceptions, under Code 1919, § 6252, must be filed within 60 days after rendition of judgment, not-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

withstanding the term was in session for more than 60 days, and the provision of Code 1919, § 6338, authorizing the trial judge to suspend execution of judgment does not authorize the extension of time for filing bill of exceptions beyond 60 days.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 389.]

3. Appeal and Error (§ 637*)—Writ of Error Dismissed Where Bill of Exceptions Was Not Filed in Time, and the Only Errors Assigned Were Dependent Thereon for Support.—Where the only errors assigned were dependent on the bill of exceptions for support, a writ of error will be dismissed where the bill of exceptions was not filed in time.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 533.]

Error to Circuit Court of City of Richmond.

Action by John W. Justus and Hunter M. Martin, partners as the Manchester Mills, against W. G. Bragg. There was a judgment for plaintiffs, and defendant brings error. Writ dismissed.

A. H. Sands, of Richmond, for plaintiff in error.

F. T. Sutton, Jr., of Richmond, for defendants in error.

ATLANTIC COAST LINE R. CO. *v.* SOUTHERN OIL &
FEED MILLS, Inc.

HINES, Director General of Railroads, *v.* SAME.

March 17, 1921.

[106 S. E. 337.]

1. Waters and Watercourses (§ 119 (4)*)—Ordinary Care to Be Exercised by Railroad in Constructing a Culvert.—The degree of care and foresight a railroad company should use in putting a pipe under its roadbed to carry off water to prevent flooding of lands of adjoining landowners is that which an ordinarily prudent man would exercise under the conditions and circumstances existing at the time.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 674.]

2. Waters and Watercourses (§ 119 (4)*)—Inadequacy of Culvert Need Not Be Affirmatively Brought to Railroad's Attention.—A railroad's duty as to construction of culverts under its roadbed is not fully discharged by careful original construction of a pipe, and it was error, in an action for damages from flooding, to instruct in effect that such was the law unless and until an inadequacy of the pipe was affirmatively brought to the road's attention in some notice given by or on behalf of the adjoining landowner.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 681.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.